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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 TODD R.G. HILL,

12
13 Plaintiff,

14 vs.
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16 THE BOARD OF DIRECTORS,
OFFICERS AND AGENTS AND
17 INDIVIDUALS OF THE PEOPLES
COLLEGE OF LAW ET AL.,
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19 Defendants.
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Case No. 2:23-cv-01298-JLS-BFM

**DEFENDANT SPIRO'S
OPPOSITION TO PLAINTIFF'S
MOTION TO ALTER OR AMEND
JUDGMENT (ECF 286)**

**Motion Before:
Hon. Magistrate Judge
Brianna Fuller Mircheff**

Case Assigned to:
Hon. Josephine L. Staton and
Hon. Magistrate Judge
Brianna Fuller Mircheff

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MEMORANDUM OF POINTS AND AUTHORITIES

A. A Motion Under F.R.C.P. 59 Is Improper Unless There Has Been a Final Judgment, and There Has Been No Final Judgment in This Action.

Plaintiff's motion states that it "addresses both the prior judgment of dismissal and the prior denial of Plaintiff's motion for reconsideration (Docket 277), entered on April 25, 2025." (ECF 286, p. 4, lns. 12-13.) Plaintiff isn't specific about what "the prior judgment of dismissal" refers to. But it must refer to dismissal of his Third Amended Complaint, because the denial of the motion for reconsideration he refers to (ECF 277) recounts that "the Magistrate Judge issued an Interim Report and Recommendation, recommending dismissal of Plaintiff's Third Amended Complaint (See ECF 213)" and that "The Court accepted the Magistrate Judge's Interim Report and Recommendation on March 27, 2025 (ECF 248)." (ECF 277, p. 2, lns. 2-3, 13-14.)

Thus, Plaintiff's present motion is a motion under F.R.C.P. 59(e) to alter or amend the Court's order accepting the Magistrate Judge's Report and Recommendation (ECF 248). For purposes of Plaintiff's present motion, there are two salient features of that order:

- First, it granted in part and denied in part the motions to dismiss by Defendant Spiro and other Defendants.
- Second, it gave the Plaintiff leave to amend.

This is easily seen by a few examples of the provisions of the order:

"(d) the Fourth Cause of Action against the PCL Defendants (that is, Defendants who moved for dismissal in ECF Nos. 154, 165, and 186) is dismissed with leave to amend. ... [ECF 248, p. 2, lns. 23-25]

"10. The moving Defendants' Motions to dismiss are otherwise denied without prejudice." [ECF 248, p. 3, lns. 5-6]

1 All of this means that the order Plaintiff's present motion attacks under
2 F.R.C.P. 59(e) is not an order that can be attacked under that rule. That is because
3 the order was not a final judgment (or a judgment at all, which is the same thing).
4 Thus Plaintiff's motion under Rule 59(e) is improper and must be denied. As this
5 Court held in *Alan v. JP Morgan Chase Bank*, case no. 2:20-cv-04544, at p. 2 (C.D.
6 Cal. 2020):

7 "A motion under . . . Rule 59(e) is only appropriate when final
8 judgment has been entered on all claims . . . [¶] Here, the Court granted in
9 part and denied in part Defendant's motion to dismiss ...; the Order did not
10 constitute a final order or judgment for purposes of Rule 59. See... *Ariz. v.*
11 *Kirk*, 109 F.3d 634, 636 (9th Cir. 1997) ('[W]e made it explicit that an order
12 dismissing a complaint with leave to amend is not a final, appealable
13 order[.]'). Thus, Plaintiff's motion can be denied on this ground alone."
14 (Some internal citations and quotation marks omitted.)

15 The other order Plaintiff attacks in the present motion is the order denying his
16 motion to reconsider the order accepting the Report and Recommendation. That
17 order denying reconsideration likewise cannot be attacked under Rule 59(e). The
18 order accepting the Report and Recommendation gave leave to amend. The order
19 denying reconsideration obviously did not cut off leave to amend, and it certainly
20 could not have. Thus, the order denying reconsideration, too, is not a final judgment
21 that can be attacked by a Rule 59(e) motion, because it allowed leave to amend.

22 In addition, although Rule 59(e) motions are sometimes treated as motions for
23 reconsideration, Plaintiff's present motion certainly should not be. Plaintiff has
24 already had his chance for reconsideration of the dismissal of the Third Amended
25 Complaint, his March 28, 2025 motion for reconsideration (ECF 253), and the Court
26 denied it by the very order Plaintiff is attacking in his present motion, the April 25,
27 2025 order accepting the Report and Recommendation (ECF 277).

B. Even if There Had Been a Judgment, Plaintiff's Motion Was Filed Too Late Under F.R.C.P. 59(b).

F.R.C.P. 59(e) reads: "A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment."

To reiterate, Plaintiff's motion is a motion under F.R.C.P. 59(e) to alter or amend the Court's order accepting the Magistrate Judge's Report and Recommendation (ECF 248). That order, ECF 248, was entered March 27, 2025. Plaintiff's present motion was filed May 1, 2025. Under the Court's rules, electronic filing of an order constitutes entry of the order. (Local Rule 5-4.7.)

Thus, Plaintiff filed his present motion 35 days after the entry of the order his motion seeks to alter or amend – March 27 to May 1 is 35 days. Therefore, Plaintiff's motion was filed a week later than the 28-day deadline for it, and the motion should be denied on that grounds as well.

C. CONCLUSION

Plaintiff's motion should be denied.

Also, Plaintiff should be ordered not to file any more motions attacking the ordering (ECF 248) accepting the Report and Recommendation or the order (ECF 277) denying Plaintiff's motion for reconsideration.

STATEMENT OF COMPLIANCE WITH LOCAL RULE 11-6.1

The undersigned party certifies that this brief contains 856 words, which complies with the word limit of L.R. 11-6.1.

May 7, 2025

_____/s/_____
Ira Spiro (sued as Robert Ira Spiro)
Defendant, a Self-Represented Attorney

PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I reside in the State of California, County of Los Angeles. My business address is 10573 West Pico Blvd. #865, Los Angeles, CA 90064.

On the date stated below, I served the document described as **DEFENDANT SPIRO'S OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT (ECF 286)** on the interested parties in this action by placing: ☐ the original ☒ true copies thereof enclosed in sealed envelopes, addressed as follows to interested parties as follows (or as stated on the attached service list):

Todd R.G. Hill
119 Vine Street
Belton, TX 76513

☒ **BY MAIL:** I deposited the envelope(s), with postage prepaid, in the United States Mail (United States Postal Service) at Los Angeles, California.

☒ **BY MAIL PER BUSINESS PRACTICES:** I placed the document(s) in a sealed envelope for collection and mailing following ordinary business practices. I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the U.S. Postal Service. Under that practice, the envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY ELECTRONIC TRANSMISSION:** On the date set forth below I caused to be transmitted the document(s) listed above on the parties listed herein at their most recent known e-mail address(s) or e-mail of record in this action before 6:00 p.m. I hereby certify that this document was served from Los Angeles, California.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed April May 7, 2025 at Los Angeles, California.

Ira Spiro

Type or Print Name

/s/

Signature

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